

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24th DAY OF FEBRUARY 2011

BEFORE

THE HON'BLE MR.JUSTICE B S PATIL

WRIT PETITION Nos.7177-78/2011(GM-RES)

Between:

1. SRI VEERANJANA V M
S/O LATE MOTAIAH
AGED ABOUT 56 YEARS
GRAMA PANCHAYAT SECRETARY
SARJAPURA GRAMA PANCHAYAT
ANEKAL TALUK
BANGALORE RURAL DISTRICT.

2. SRI K SHIVASHANKAR
S/O LATE B KESHAVARAJU
AGED ABOUT 56 YEARS
WORKING AS SECERTARY
MACHOHALLI GRAMA PANCHAYAT
BANGALORE NORTH TALUK
BANGALORE URBAN DISTRICT. .. PETITIONERS

(BY SRI A NAGARAJAPPA, ADVOCATE)

AND:

1. THE COMMISSIONER FOR INFORMATION
KARNATAKA STATE INFORMATION
COMMISSION
M S BUILDING
DR.AMBEDKAR VEEDHI
BANGALORE 560 001.

2. THE CHIEF EXECUTIVE OFFICER
ZILLA PANCHAYATH
BANGALORE URBAN DISTRICT

KRISHI BHAVAN
KITUR RANI CHENNAMMA CIRCLE
BANGALORE 560 001.

3. SRI C NARASIMHAMURTHY
ADVOCATE AND SOLICITOR
S/O NOW KNOWN TO THE
PETITIONERS
AGED ABOUT 35 YEARS
KEMPAPURA VILLAGE
CHIKKABANAVARA POST
YESHWANTHAPURA HOBLI
BANGALORE 560 090. .. RESPONDENTS

(BY SRI R DEVDAS, AGA FOR R.1)

THESE WRIT PETITIONS ARE FILED UNDER
ARTICLES 226 AND 227 OF THE CONSTITUTION OF
INDIA PRAYING TO QUASH THE ORDER PASSED BY
THE 1ST RESPONDENT IN CASE NO.KIC 11710 PIN
2009 DATED 14.10.2010 VIDE ANNEXURE F.

THESE WRIT PETITIONS COMING ON FOR
PRELIMINARY HEARING THIS DAY, THE COURT
MADE THE FOLLOWING:

ORDER


Learned Additional Government Advocate is
directed to take notice for respondent no.1. Notice to
respondents 2 and 3 is un-necessary as the relief
sought in the writ petition will not in any manner
affect their interest.



2. Petitioners were working as Secretaries of the Grama Panchayat. When they were working as Secretaries of the Grama Panchayath, Chikkabanavara, the 3rd respondent seems to have lodged a complaint before the Lokayukta and also before the Commissioner for Information, Karnataka State Information Commission seeking to furnish certain information pertaining to the insertion of the entries in respect of the properties bearing No.99/1 and 343 of Chikkabanavara Village. The first petitioner is found guilty of the irregularity in connection with the allegation made against him by the disciplinary authority and a penalty is imposed as per the provisions of the Karnataka Civil Services (C.C.A.) Rules, 1957 withholding one annual increment payable to him with cumulative effect. This order is passed on 10.9.2010. However, as regards the second petitioner, there is no such order and the complaint filed against him before the Lokayukta is still pending. It is also alleged in the writ petition that the second petitioner has also filed a

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complaint regarding the illegal entries made in the village records pertaining to the properties. When the matter stood thus in the proceedings initiated before the 1st respondent, the Information Commissioner, referring to the contentions of the petitioner has passed the impugned order. As the first petitioner had admitted that he was responsible for the insertions made in the records it was urged before the Information Commissioner that he ought to have been proceeded against by initiating prosecution and the action taken for misconduct as per the Civil Services Rules was not sufficient. Based on this contention, the Information Commissioner has directed the Chief Executive Officer of the Zilla Panchayat, Bangalore Urban District to examine the request and take appropriate action as per the Government Order dated 28.1.1997 regarding the prosecution of the petitioner. The State Information Commissioner has further directed that steps have to be taken in accordance with law to initiate action as per Section



269 of the Karnataka Panchayath Raj Act, 1993 to cancel the entries inserted.

3. In this writ petition, learned counsel for the petitioner contends that the respondent/ State Information Commissioner has exceeded the power and authority conferred under section 20 of the Right to Information Act, 2005 in proceeding to direct the Chief Executive Officer to take action as per the Government Order dated 28.1.1997. It is his contention that the Government Order dated 28.1.1997 produced at Annexure K is applicable to the revenue department and if any action has to be initiated for prosecution, the procedure prescribed therein is required to be followed and that prior sanction by the competent authority is contemplated. He, therefore contends if the direction issued by the State Information Commissioner is given effect to, it will seriously affect the interest of the petitioner.

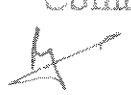


4. Learned AGA supports the order passed and contends that in view of the serious nature of the allegation made, the observations made by the State Information Commissioner do not call for interference.

5. Having heard the learned counsel for the parties and on careful perusal of the pleadings, the impugned order and the relevant provisions, as rightly contended by the counsel for the petitioner, if at all, any action is to be initiated for criminal prosecution, it is for the competent authorities to examine the matter in accordance with law and take an independent decision. Section 20 of the Right to Information Act, 2005 lays down the penalty that the State Information Commission may impose while deciding any complaint or appeal. Sub-clause (2) of Section 20 makes it clear that if it is found that without any reasonable cause and persistently the Public Information Officer had failed to furnish the information within the time stipulated under sub-section (1) of Section 7 or has acted in a malafide

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manner in denying the request for information or knowingly given incorrect or misleading information or destroyed information which was the subject of request or obstructed in any manner to furnish the information, the Information Commission shall recommend for disciplinary action against the officer as per the provisions of the Service Rules applicable to him. Section 20 Sub-clause (2) of the Act does not clothe the Commission with a power to direct initiation of criminal proceedings. Though, in the instant case, the State Information Commissioner has directed the Chief Executive Officer to take action as per the Government Order dated 28.1.1997, as the Government Order dated 28.1.1997 contemplates initiation of criminal prosecution, such a direction issued in the proceedings under the Right to Information Act, as rightly contended by the petitioner, have very serious repercussion against the interest of the petitioner. Having regard to the scope and nature of the proceedings before the Information Commissioner and having regard to the provisions



contained under Section 20 of the Act, I am of the view that it was un-necessary for the State Information Commissioner to issue such a direction. The said direction has to be modified to mean that the competent authorities will be entitled to take action in accordance with law. The writ petition is partly allowed only to the above extent. As regards the remaining portion of the findings of the order under challenge, the matter does not call for interference.

Writ petitions stand disposed of with the modification of the impugned order as ordered above.

Sd/-
JUDGE

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